



Mental Health (Public Safety and Appeals) (Scotland) Act 1999

1999 asp 1

1 Continued detention of mentally disordered patients on grounds of public safety

(1) In section 64 (right of appeal of patients subject to restriction orders) of the Mental Health (Scotland) Act 1984 (c. 36) (“the 1984 Act”)—

(a) at the beginning there are inserted the following subsections—

“(A1) Where an appeal to the sheriff is made by a restricted patient who is subject to a restriction order, the sheriff shall refuse the appeal if satisfied that the patient is, at the time of the hearing of the appeal, suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that the patient continue to be detained in a hospital, whether for medical treatment or not.

(B1) The burden of proof of the matters as to which the sheriff is to be satisfied for the purposes of subsection (A1) of this section is on the Scottish Ministers.

(C1) Nothing in section 102 (State hospitals) of the National Health Service (Scotland) Act 1978 (c. 29) prevents or restricts the detention of a patient in a State hospital in pursuance of the refusal, under subsection (A1) of this section, of an appeal.”;

(b) in subsection (1), for the words from the beginning to “order” there is substituted “Where the sheriff has decided, under subsection (A1) of this section, not to refuse an appeal”.

(2) In section 66 (appeal to sheriff by conditionally discharged patient) of the 1984 Act—

(a) after subsection (1) there are inserted the following subsections—

“(1A) The sheriff shall refuse an appeal under subsection (1) above if satisfied that the patient is, at the time of the hearing of the appeal, suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that

Status: This is the original version (as it was originally enacted).

the patient continue to be detained in a hospital, whether for medical treatment or not.

(1B) The burden of proof of the matters as to which the sheriff is to be satisfied for the purposes of subsection (1A) of this section is on the Scottish Ministers.

(1C) Nothing in section 102 (State hospitals) of the National Health Service (Scotland) Act 1978 (c. 29) prevents or restricts the detention of a patient in a State hospital in pursuance of the refusal, under subsection (1A) of this section, of an appeal.”;

(b) in subsection (3) for the words from the beginning to “section”, where first occurring, there is substituted “Where the sheriff has decided, under subsection (1A) of this section not to refuse an appeal under subsection (1) and in any appeal under subsection (2) of this section, if”;

(c) after subsection (3) there is inserted the following subsection—

“(3A) A conditional discharge under subsection (3)(b) of this section shall have effect on the occurrence of any of the events mentioned in subsection (4A) of section 64 of this Act.”;

(d) in subsection (4) for “thereupon” there is substituted “on the occurrence of any of the events mentioned in subsection (4A) of section 64 of this Act”.

(3) In section 68 (power of Scottish Ministers to discharge patients) of the 1984 Act, after subsection (2) there are inserted the following subsections—

“(2A) The Scottish Ministers shall not, however, discharge a patient from hospital under subsection (2) of this section if they are satisfied that the patient is suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that the patient continue to be detained in a hospital, whether for medical treatment or not.

(2B) Nothing in section 102 (State hospitals) of the National Health Service (Scotland) Act 1978 (c. 29) prevents or restricts the detention of a patient in a State hospital in pursuance of the decision of Scottish Ministers, under subsection (2A) of this section, not to discharge the patient.”.

(4) In section 74 (transfer of patients back to prison) of the 1984 Act after subsection (1A) there are inserted the following subsections—

“(1B) Neither of subsections (1) and (1A) above apply, however, where the Scottish Ministers are satisfied, at the respective times mentioned in these subsections, that the person is, at the relevant time, suffering from a mental disorder the effect of which is such that it is necessary, in order to protect the public from serious harm, that the person continue to be detained in a hospital, whether for treatment or not.

(1C) Nothing in section 102 (State hospitals) of the National Health Service (Scotland) Act 1978 (c. 29) prevents or restricts the detention of a person in a State hospital in consequence of subsection (1B) above.”.

(5) The amendments made by subsections (1) and (2) above have effect in relation to appeals proceeding under section 64, 65 or 66 of the 1984 Act in which the hearing takes place on or after 1 September 1999 and the amendments made by subsections (3) and (4) above have effect in relation to cases considered by the Scottish Ministers on or after that date.